

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 08-0322 RB/ACT
CR 04-2114 RB

LEONARDO CASTANEDA,

Defendant.

ORDER

This matter is before the Court on Defendant's motion for sentence adjustment (CV Doc. 1; CR Doc. 76) filed March 24, 2008. Defendant argues that the failure to reduce his sentence based on his deportability resulted in a longer sentence than would have been imposed on a United States citizen. As the Court of Appeals for the Tenth Circuit has stated, "[Defendant's] request for a downward departure based on the 'collateral consequences' of his status as a deportable alien has been foreclosed. . . ." *United States v. Tamayo*, 162 F. App'x 813, 815 (10th Cir. 2006) (citing *United States v. Mendoza-Lopez*, 7 F.3d 1483, 1487 (10th Cir. 1993)). The Tenth Circuit also has construed allegations similar to Defendant's as possibly stating an equal protection claim for habeas corpus relief. *See Tamayo*, 162 F. App'x at 815. This claim must be brought in an application for writ of habeas corpus under 28 U.S.C. § 2241 in the district where Defendant is confined. *See id.* The Court will deny Defendant's motion.

IT IS THEREFORE ORDERED that Defendant's motion for sentence adjustment (CV Doc. 1; CR Doc. 76) filed March 24, 2008, is DENIED; and this civil proceeding is DISMISSED.



UNITED STATES DISTRICT JUDGE